

  
Councilmember Sandra Allen

  
Councilmember Kevin Chavous

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Allen introduced the following bill, which was referred to  
the Committee on \_\_\_\_\_.

To establish a presumption that a child is abused or neglected and cannot be protected from  
further harm without being removed from the custody of the mother if the child, at birth  
in the District of Columbia, is found to have the presence of any controlled substance not  
prescribed for the mother by a physician, is diagnosed by a physician to suffer from any  
illness, disease, or condition, which, to a degree of reasonable medical certainty, is  
attributable to in utero exposure to a controlled substance not prescribed for the mother  
by a physician, is diagnosed with fetal alcohol syndrome as a result of in utero exposure  
to alcohol, or if the mother, at birth of the child, is found to have the presence of any  
amount of controlled substance not prescribed by a physician,

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
act may be cited as the "Infant Protection Act of 2001".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Agency" means the Child and Family Services Agency.

(2) "Controlled substance" means a drug or chemical substance, or immediate  
precursor, as set forth in Schedules I through V of Chapter 9 of Title 48 of the District of  
Columbia Official Code.

(3) "Fetal alcohol syndrome" means a pattern of birth defects occurring as a result  
of excessive alcohol consumption by the mother during the pregnancy and characterized by

growth retardation, cranial, facial, or neural abnormalities, and developmental disabilities. 1

(4) "Health professional" means any person licensed or permitted by Chapter 33 2  
of Title 2 of the District of Columbia Official Code to practice a health occupation in the District 3  
of Columbia. 4

(5) "Law enforcement officer" means any person employed by the Metropolitan 5  
Police Department whose duties are primarily the investigation, apprehension, or detention of 6  
individuals suspected or convicted of committing offenses violating the criminal laws of the 7  
District of Columbia, the United States of America, or any state of the United States of America. 8

(6) "Metabolite" means a substance produced by metabolism, or a substance 9  
necessary for or taking part in a particular metabolic process. 10

Sec. 3. Persons required to report suspicion of abuse or neglect. 11

(a) The following persons who, in their official capacity, have reason to suspect that a 12  
child is abused or neglected, shall be required to report the matter immediately to the Child and 13  
Family Services Agency: 14

(1) A person licensed to practice medicine or the healing arts in the District of 15  
Columbia; 16

(2) A hospital resident or intern working in a hospital, or other medical facility, in 17  
the District of Columbia; 18

(3) A person employed in the nursing profession in the District of Columbia; 19

(4) A person employed in the mental health profession in the District of 20  
Columbia; 21

(5) A person employed as a social worker in the District of Columbia; 22

(6) A law enforcement officer; 23

- (7) A probation officer; 1
- (8) An officer of the court; 2
- (9) A teacher or other person employed in a District of Columbia public, private, 3  
kindergarten, or nursery school; and 4
- (10) A person providing full-time or part-time child-care for pay, on a regularly 5  
planned basis. 6

(b) For purposes of subsection (a) of this section, a "reason to suspect a child is abused or 7  
neglected" shall include: 8

(1) A blood or urine test of the child at birth or a blood or urine test of the mother 9  
at the birth of the child showing the presence of any amount of a controlled substance or a 10  
metabolite of a controlled substance, unless the presence of the substance or the metabolite is the 11  
result of a medical treatment administered to the mother of the infant by a licensed health care 12  
provider; and 13

(2) The child has a medical diagnosis of fetal alcohol syndrome. 14

(c) All reports shall be made to the Agency within 48 hours of the suspected abuse or 15  
neglect. Initial reports may be made orally, in the interest of time, but should be followed up 16  
with a written report documenting the date, time, place, and nature of the suspected abuse or 17  
neglect. 18

#### Sec. 4. Presumption of abuse and neglect. 19

(a) It is presumed that a newborn child is abused or neglected and that the child cannot 20  
be protected from further risk of harm affecting the child's life or physical health without being 21  
removed from the custody of the mother upon proof that: 22

(1) A finding made by an attending physician within 7 days of the child's birth that 23

the results of a blood or urine test conducted within 48 hours of the birth of the child indicates 1  
the presence in the blood of the mother of a controlled substance not prescribed for the mother by 2  
a physician; 3

(2) A finding by an attending physician made within 48 hours of a child's birth 4  
that the child was born dependent on a controlled substance which was not prescribed by a 5  
physician for the mother and the child has demonstrated withdrawal symptoms; 6

(3) A diagnosis by an attending physician made within 7 days of a child's birth that 7  
the child has an illness, disease, or condition which, to a reasonable degree of medical certainty, 8  
is attributable to in utero exposure to a controlled substance which was not prescribed by a 9  
physician for the mother or the child; or 10

(4) A diagnosis by an attending physician made within 7 days of a child's birth 11  
that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. 12

(b) This presumption may be rebutted by proof that the father or another adult who will 13  
assume the role of parent or guardian, is available and suitable to provide care for the child in the 14  
home of the mother. The father or the other adult must be made a party to the action and subject 15  
to the court's order establishing the conditions for maintaining the child in the mother's home. 16  
This statutory presumption does not preclude the court from ordering the removal of a child upon 17  
other proof of alcohol or drug abuse or addiction by the mother. 18

#### Sec. 5. Child and Family Services Agency fitness review. 19

(a) In any case where a blood or urine test of the child at birth, or a blood or urine test of 20  
the mother at the birth of the child, shows the presence of any amount of a controlled substance, 21  
or a metabolite of a controlled substance, not prescribed by a licensed health care provider, the 22  
Child and Family Services Agency shall begin immediate proceedings to remove the child from 23

the home of the mother. Within 14 days of receiving notice, the Child and Family Services Agency shall perform a fitness review of the mother that will determine:

- (1) The name, age, sex, and home condition of the abused or neglected child;
- (2) The name, age, sex, and home condition of any other children in the home;

and

- (3) Whether there is any child in the home that cannot be protected from further risk of harm affecting the child's life or physical health without being removed from the home.

(b) If any other child is found to be at risk of harm, or suspected of exposure to drug-related activity in the household, the investigation shall determine whether there is sufficient reason to believe:

- (1) A parent, guardian, custodian, or any other individual residing in the home, uses or abuses drugs or alcohol on a regular basis;
- (2) A parent, guardian, custodian, or any other individual in the household is dependent on drugs or alcohol,
- (3) A parent, guardian, custodian, or any other individual in the household is in need of drug or alcohol treatment;
- (4) The packaging, sale, or distribution of drugs or drug paraphernalia occurs in the household; or
- (5) Drug or alcohol related activity has contributed, or is likely to contribute to violent conduct within the household

(c) (1) Within 10 days of receiving notice of the suspected abuse or neglect, the Agency shall prepare a preliminary report of its findings.

- (2) The Agency shall provide a copy of any report regarding suspected abuse or

neglect that indicates possible criminal activity to the Metropolitan Police Department and to the  
Office of the U.S. Attorney for the District of Columbia.

Sec. 6. Risk assessment for drug and alcohol use; reporting requirement to Child and  
Family Services Agency.

(a) All health care providers in the District of Columbia providing prenatal care to  
pregnant women shall perform, during the first trimester of pregnancy or as early as possible, a  
risk assessment, which shall include an assessment for drug and alcohol usage.

(b) If the results of the assessment indicate the use or abuse of alcohol or any controlled  
substance not prescribed by a physician, the provider shall inform the patient of the potential  
health risks of continued usage of alcohol or drugs.

(c) In those cases where the patient is found to be at risk in the first trimester, the health  
care provider shall perform an additional risk assessment for alcohol and drug use in the second  
and third trimesters. If the assessment indicates the continued usage in the third trimester, the  
health care provider shall be required to report the patient to the Child and Family Services  
Agency upon such finding.

(d) The provider, if otherwise authorized, may administer or prescribe controlled  
substances that relieve withdrawal symptoms and assist the patient in reducing the need for  
unlawful controlled substances in accordance with medically acceptable practices.

(e) The Child and Family Services Agency shall assist any pregnant woman referred as a  
result of their use of drugs or alcohol during pregnancy by assisting in the provision or  
acquisition of any of the following services deemed necessary:

(1) Emergency financial aid;

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| (2) Homemaker services;   | 1  |
| (3) Time-limited family reunification services;   | 2  |
| (4) Child care;   | 3  |
| (5) Counseling services;  | 4  |
| (6) Parenting classes for the mother, father, guardian, or custodian;                               | 5  |
| (7) Emergency medical treatment;  | 6  |
| (8) Mental health or substance abuse treatment;   | 7  |
| (9) Family shelter or other appropriate placement; and  | 8  |
| (10) A conference with one or more extended family members, or individuals                          | 9  |
| residing in the household, to formulate an emergency placement plan.                                | 10 |
| (f) To the maximum extent possible, all resources with the District of Columbia                     | 11 |
| Department of Health, and the Department of Human Services shall be used for the provision of       | 12 |
| the services listed in subsection (e) of this section and any related case management.              | 13 |
| Sec. 7. Penalty for failure to report.  | 14 |
| Any person required to file a report pursuant to section 3 who fails to do so within 72             | 15 |
| hours of their first suspicion of child abuse or neglect shall be fined not more than \$500 for the | 16 |
| first failure and not less than \$500 nor more than \$2500 for any subsequent failures.             | 17 |
| Sec. 8. Knowingly making a false report of neglect or abuse.  | 18 |
| It is unlawful to knowingly make a false report of neglect or abuse. Any person found to            | 19 |
| have knowingly made a false report of neglect or abuse is guilty of a misdemeanor, and subject to   | 20 |
| imprisonment not to exceed 180 days, and a fine not to exceed \$5,000, or both.                     | 21 |
| Sec. 9. Fiscal impact statement.  | 22 |
| The Council adopts the fiscal impact statement in the committee report as the fiscal                | 23 |

impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, 1  
approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)). 2

Sec. 10. Effective date. 3

This act shall take effect following approval by the Mayor (or in the event of veto by the 4  
Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 5  
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 6  
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 7  
Columbia Register. 8

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